

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
JUNIOR MILLINGTON,Plaintiff, : 08 Civ. 2501 (LMM)
- against - : MEMORANDUM AND ORDER
MILITARY JURISDICTION :
(US GOVERNMENT), :
Defendants. :
-----x

McKENNA, D.J.,

The United States moves for dismissal of the above action -- brought by plaintiff pro se for damages allegedly resulting, inter alia, from his infection with West Nile Virus -- on the grounds of (i) lack of subject matter jurisdiction (Fed. R. Civ. P. 12(b)(1)), (ii) improper venue (id. Rule 12(b)(3)), and (iii) failure to state a claim upon which relief can be granted. (Id. Rule 12(b)(6)). The Court reaches only the first ground.

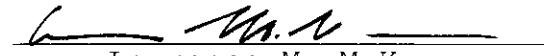
Reading the complaint generously since it is a pro se document, the Court construes it as a claim under the Federal Tort Claims Act ("FTCA"). "The FTCA requires that a claimant exhaust all administrative remedies before filing a complaint in federal district court." Celestine v. Mount Vernon Neighborhood Health Center, 403 F.3d 76, 82 (2d Cir. 2005) (citing 28 U.S.C. § 2675(a)) (other citations omitted).

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The government's motion was filed on or about May 15, 2008, and no response to the motion has been filed by plaintiff, nor any application for an extension of his time to respond to the motion. Plaintiff has not alleged any exhaustion of his administrative remedies nor has the government located any claim by defendant. (See Ferguson Declaration, Mar. 25, 2008, at 1.) Accordingly, substantially for the reasons set forth by the government in Defendant's Memorandum of Law in Support of its Motion to Dismiss the Complaint, May 14, 2008, at 1-5, the complaint is dismissed for lack of subject matter jurisdiction.

SO ORDERED.

Dated: July 16, 2008


Lawrence M. McKenna
U.S.D.J.